

JANICE PEARSON

IBLA 83-384

Decided May 27, 1983

Appeal from a decision of the Nevada State Office, Bureau of Land Management, rejecting desert land entry application, N-36213.

Affirmed.

1. Desert Land Entry: Applications -- Desert Land Entry: Water Right

A desert land entry application is properly rejected where the applicant fails to provide evidence of a water right or that the proposed system would provide a permanent and feasible source of sufficient water for irrigation.

APPEARANCES: Wayne Pearson, for appellant. 1/

1/ Although an individual may represent a member of his family on appeal before the Department, 43 CFR 1.3(b)(3)(i), Wayne Pearson refers to the application frequently as though it were his application which is at issue, rather than Janice Pearson's. In fact, the application is (or should be) exclusively hers. In support of Janice Pearson's application, Wayne Pearson also executed a "Statement of Witness" (GPO Form 779-113), subject to the criminal sanctions of 18 U.S.C. § 1001 (1976), in which he declared, "[I] further state that I am not interested in any way or manner, directly or indirectly, present or prospective, in the applications in support of which this statement is made, nor in the land itself, nor in any title thereto which may be acquired by said applicant or any other person * * *." However, the record is replete with such statements by Wayne Pearson as, "I have spent thousands of dollars on this project," and "I am proposing 2 dams," and "I am asking for a flood water permit," and "I have applied for a water well permit," and "We also have all the equipment," and "We own all the private land in the area," etc. (Emphasis added.) The other "disinterested" witnesses who filed statements in support of Janice Pearson's application were Ilene Pearson and Helen Pearson. The relationships of Janice, Wayne, Ilene and Helen Pearson are not reflected in the record.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Janice Pearson appeals from a January 10, 1983, decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting desert land entry application, N-36213, because appellant "failed to provide evidence that the proposed system * * * would provide a permanent and feasible source of sufficient water for irrigation."

Appellant's application, filed with BLM on April 8, 1982, was returned with a notice of deficiencies, dated July 23, 1982. A plan of irrigation and evidence of a water permit application had not been submitted with the application. The application was rejected in a decision dated September 13, 1982, after those deficiencies had not been corrected within the specified time. On October 12, 1982, some of the requested information was received by BLM and, consequently, the decision to reject the application was vacated. BLM then issued a second notice of deficiency for failure to submit a plan of irrigation. Subsequently, BLM rendered the decision appealed from when no plan was received.

In a statement of reasons, appellant briefly describes the proposed method of storing water and states, "These dams will be permanent dams and will hold sufficient water." Appellant then remarks, "I am asking for a flood water permit and a well water permit. There is nearly always enough flood water to irrigate the proposed land."

[1] The Desert Land Act, 43 U.S.C. § 321 (1976), provides for the entry of desert lands for the purpose of reclaiming them "by conducting water upon the same * * * Provided, however, that the right to the use of water by the person so conducting the same * * * shall depend upon bona fide prior appropriation."

The pertinent regulation, 43 CFR 2521.2(d), provides that no desert land entry application will be allowed unless accompanied by evidence satisfactorily showing that the intending entryman has acquired the right to permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, so far as then possible, appropriate steps looking to the acquisition of such a water right. Appellant states that she expects to irrigate the land by water from spring runoff and summer floods. Specific information concerning the capabilities of the proposed irrigation system, or that sufficient water could be provided, was not given. Moreover, despite a declaration that a water permit application was submitted to the State of Nevada, there is no evidence of such in the record.

The Department has consistently held that a desert land entry application without evidence of a water right must be rejected. James R. Hardcastle, 69 IBLA 341 (1982); Patricia K. Scher, 59 IBLA 276 (1981). A desert land entry application is also properly rejected where the applicant fails to provide evidence that the proposed system would provide a permanent and feasible source of sufficient water for irrigation. Patricia K. Scher, *supra*. We find that because appellant failed to provide the necessary evidence, BLM's action to reject this desert land application was proper. That action, however, is not prejudicial to the right of appellant to file a complete

application when she has evidence of her steps to obtain an adequate and sufficient water right, and has proof regarding the sufficiency of her plans for irrigation of the land.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

